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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:

THE LITIGATION PRACTICE GROUP, P.C.,

Debtor.

RICHARD A. MARSHACK, Trustee of the LPG
Liquidation Trust,

Plaintiff,

v.

WORLD GLOBAL FUND, LLC, *et al.*,

Defendants.

Case No.: 8:23-bk-10571-SC

Chapter 11

Adv. Case No.: 8:25-ap-01105-SC

**DEFENDANTS OPTIMUMBANK AND
OPTIMUM BANK HOLDINGS, INC.’S
OPPOSITION TO PLAINTIFF RICHARD
MARSHACK TRUSTEE OF THE LPG
LIQUIDATION TRUST’S MOTION TO
COMPEL DISCOVERY RESPONSES
FROM OPTIMUMBANK AND
OPTIMUMBANK HOLDINGS, INC.**

Hearing:

Date: January 21, 2026

Time: 11:00 a.m.

Crtm: 5C

Defendants OptimumBank (“OptimumBank”) and OptimumBank Holdings, Inc. (“OHI,”
and together with OptimumBank, the “Defendants”) respectfully submit this opposition to the
Motion to Compel Discovery Responses from OptimumBank and OptimumHoldings, Inc. [Doc.
270] (the “Motion to Compel”) filed by Richard A. Marshack, Trustee of the LPT Liquidation Trust
(“Plaintiff”). This opposition is supported by the points and authorities cited herein, the declaration
filed concurrently herewith, and the record currently before the Court.

CASE No. 8:25-ap-01105-SC

**DEFENDANTS OPTIMUMBANK, AND OPTIMUMBANK HOLDINGS, INC.’S OPPOSITION TO
PLAINTIFF’S MOTION TO COMPEL DISCOVERY RESPONSES**

1 **I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS**

2 The Parties held their Rule 26(f) Conference on May 1, 2025, as ordered by the Early
3 Meeting Order. [Dkt. # 5, p. 3-4, Item no. 3]. The Parties discussed the nature and basis of the
4 claims, possibilities for settlement, initial disclosures, and a settlement plan. Following the Rule
5 26(f) Conference, counsel for the Trustee emailed Optimum, attaching the Early Meeting Order and
6 clarifying that it continued to govern the case schedule. [See Declaration of David T. Hayek (“Hayek
7 Decl.”), ¶ 2 and **Exhibit 1** (email dated May 3, 2025 from Trustee’s counsel Matthew Sommer to
8 OptimumBank’s counsel David Hayek and others).] At the initial scheduling conference,
9 Defendants requested the parties to the Adversary Proceeding enter into a separate protective order
10 confirming use and dissemination of documents and information exchanged during discovery in this
11 Adversary Proceeding would only be used in this Adversary Proceeding, consistent with Federal
12 Rule of Civil Procedure 26(b)(1). Defendants’ counsel provided that proposed protective order on
13 June 13, 2025. [See Hayek Decl., ¶ 3 and **Exhibit 2** (email attaching proposed protective order
14 including limitation of use to the action).] Plaintiff did not respond to that email until two weeks
15 later, on June 26, 2025. Hayek Decl., ¶ 4. In short the Trustee refused to agree to the proposed
16 protective order, or to limit use and dissemination of documents and information disclosed in
17 discovery to this action. [*Id.*, and **Exhibit 3** (email dated June 26, 2025 from Matt Sommer to David
18 Hayek).]

19 Thus, Plaintiff took the position that it was free to use any documents/information he
20 obtained in this case in any of the other actions related to the principal bankruptcy. *Id.* Thus, it was
21 not that Defendants wanted a protective order just to have one in this action – they wanted the order
22 because Plaintiff took the position that the existing protective order did not restrict use of
23 documents/information consistent with Rule 26(b)(1). That issue was not resolved until September
24 16, 2025, four months after the Rule 26(f) conference, when this Court confirmed that its prior
25 protective order regarding the use and dissemination of information provided in discovery was
26 intended to comply with Rule 26(b)(1) [Doc. #216] and Plaintiff (through counsel) agreed to abide
27 by that limitation. **That** delay lies entirely at the feet of Plaintiff. In October, Defendants produced
28

1 over four thousand pages of responsive documents, produced in the manner in which they were
2 maintained by Optimum Bank. Hayek Decl., ¶ 5. That production was then followed by a further
3 production of another 2,700 pages of documents, identified to the requests to which they responded.
4 Hayek Decl., ¶ 6. Since that production, OptimumBank has been working to gather communications
5 related to various partial account names and numbers, transactions, and parties, identified by
6 Plaintiff. Following the OptimumBank's completion of that process, work began to identify those
7 communications responsive to Plaintiff's production requests, to be produced on a rolling basis.
8 Hayek Decl., ¶ 7 During that process, a number of technical issues arose with certain documents
9 which required further work to ensure the production was complete. Hayek Decl. ¶ 8.

10 At present, Defendants are processing nearly **46,000 emails** and attachments which respond
11 to the exceptionally broad requests for production propounded by Plaintiff. Once that is completed,
12 there is a second batch of emails, of roughly the same size, that will be processed and produced.
13 Given the large number of documents identified, the processing of those documents remains
14 ongoing. Hayek Decl. ¶ 9. It is also the case that, unlike Plaintiff, who has myriad attorneys
15 apparently devoted to this action (and that is just within the Dinsmore firm), Defendants have two
16 attorneys and staff working on this matter, along with their other cases. Hayek Decl. ¶ 10. It takes
17 time to perform the due diligence required to produce the volume of documents sought by Plaintiff.
18 Defendants are working as quickly as possible to complete the production. Hayek Decl. ¶ 11.

19 It should also be noted that, following the Rule 26(f) meeting of counsel, Defendants
20 provided a list of documents it sought from Plaintiff. Hayek Decl. ¶ 12 and **Exhibit 4**. To date,
21 Plaintiff has not produced any of these requested documents. *Id.*

22 With respect to Defendants' written responses to the discovery requests propounded by
23 Plaintiff, Defendants believe the responses, both objections and substantive responses, were entirely
24 proper when provided. Hayek Decl. 13. However, Defendants have indicated to Plaintiff's counsel
25 that, once the production of documents is completed, the written responses would be updated as
26 required by the Rules.
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1 **II. LEGAL DISCUSSION**

2 **A. THE MOTION TO COMPEL IS, AND THE MEET AND CONFER PROCESS**
3 **WAS, PROCEDURALLY DEFECTIVE**

4 As an initial matter, the Motion to Compel should be denied on the basis that it is
5 procedurally defective. LBR 7026-1 sets forth the procedural requirements for a discovery motion.
6 The rule requires the parties to first meet and confer in person or by telephone in an effort to resolve
7 the underlying discovery dispute. *See* LBR 7026-1(c)(2). If the parties are unable to resolve the
8 dispute, the moving party “must file and serve a notice of motion together with a written stipulation
9 by the parties.” LBR 7026-1(c)(3). By rule, the stipulation “must be contained in 1 document and
10 must identify, *separately and with particularity*, each disputed issue that remains to be determined at
11 the hearing and the contentions and points and authorities of each party as to each issue.” LBR 7026-
12 1(c)(3)(A). Importantly, “the stipulation must not simply refer the court to the document containing
13 the discovery request forming the basis of the dispute.” LBR 7026-1(c)(3)(B). The rule provides the
14 following example: “if the sufficiency of an answer to an interrogatory is in issue, the stipulation
15 must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by
16 each party’s contentions, separately stated.” *Id.*

17 Prior to filing the Motion to Compel, on October 20, 2025, Plaintiff’s counsel provided the
18 undersigned with a draft of Proposed Stipulated Details of Discovery Dispute (the “Proposed
19 Stipulation”). [Hayek Decl., ¶ 14 and **Exhibit 5**]. The Proposed Stipulation consisted of a running
20 narrative of a self-serving history of the parties’ discovery dispute with select references to various
21 discovery requests. (*See id.* at **Ex. 5**). It did not comply with prescriptions of LBR 7026-1. Indeed,
22 the Proposed Stipulation did not contain verbatim references to the discovery requests at issue and
23 the corresponding answers, followed by separate statements of the parties’ respective conditions, as
24 plainly required by the rule. Defendants (through counsel) returned the Proposed Stipulation to
25 Plaintiff’s counsel on November 18, 2025, with proposed revisions, but advised Plaintiff’s counsel
26 that the document did not comply with LBR 7026-1(c), and requested that the document be revised
27 to conform to the rule. [*See* Hayek Decl., ¶ 15 and **Exhibit 6**]. Defendants did not receive a revised
28 draft of the Proposed Stipulation which conformed to LBR 7026-1(c). Instead, Plaintiff went

1 forward with the filing of the Motion to Compel. By virtue of Plaintiff's failure to include a
2 compliant stipulation with the Motion to Compel, the motion is defective and should be denied on
3 this basis alone. *See* LBR 7026-1(c)(3)(C).

4 **B. DEFENDANTS ARE WORKING AS DILIGENTLY AS REASONABLY**
5 **POSSIBLE TO PRODUCE ALL RESPONSIVE DOCUMENTS WITHIN**
6 **THEIR POSSESSION, CUSTODY OR CONTROL**

7 As noted above, Defendants have produced thousands of pages of responsive documents
8 already. They are working to produce nearly 90,000 emails and related attachments at present.
9 However, that process takes time in order to ensure (1) all responsive documents are produced; (2)
10 any privilege issues are identified; and (3) any documents *not* responsive to any request are not
11 included in the production. [Hayek Decl., ¶ 16.] When Defendants asked Plaintiff if a "rolling"
12 production would be acceptable, Plaintiff agreed. [Hayek Decl., ¶ 17.] Plaintiff has *not* suggested to
13 Defendants that the documents being produced are somehow non-responsive to the requests made by
14 Plaintiff. [Hayek Decl., ¶ 18.] All of the responsive documents will be produced as quickly as can
15 be accomplished.

16 **C. DEFENDANTS' WRITTEN RESPONSES WILL BE UPDATED AS**
17 **REQUIRED BY THE RULES**

18 The Federal Rules of Civil Procedure, as made applicable to this case by the Federal Rules of
19 Bankruptcy Procedure, include an ongoing obligation to update discovery responses from time to
20 time as necessary to reflect newly identified information and/or changed circumstances, where
21 warranted. Defendants have committed to updating their written discovery responses once the
22 responsive documents have been produced. At the time the responses were provided, only
23 appropriate objections were asserted. In addition, substantive responses were also provided by each
24 of Defendants to most of the discovery requests. But Plaintiff's failure to comply with the
25 requirements for separately setting forth each disputed discovery request and the response thereto, as
26 well as provide a specific explanation of why a further response was required to each, precludes the
27 Court from making a determination as to any specific request/response in the written discovery about
28 which the instant motion is made. Similarly, it is impossible for Defendants to provide a response to

1 the non-existent statement of discovery in dispute, but can only respond to generic arguments made
2 by Plaintiff in his Proposed Stipulation and the instant motion. Such is not the proper means of
3 resolving discovery disputes.

4 **IV. CONCLUSION**

5 For the reason set forth herein, the Motion to Compel should be denied.

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7 Dated: January 7, 2026

HINSHAW & CULBERTSON LLP

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9 By: /s/ David T. Hayek

10 BRIAN A. PAINO
11 DAVID T. HAYEK
12 ZEESHAN IQBAL

13 Attorneys for *Defendants* **OPTIMUMBANK, and**
14 **OPTIMUMBANK HOLDINGS, INC.**
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

HINSHAW & CULBERTSON, LLP 350 S. Grand Avenue, Suite 3600, Los Angeles, CA 90071-3476

A true and correct copy of the foregoing document entitled (*specify*): **DEFENDANTS OPTIMUMBANK
AND OPTIMUM BANK HOLDINGS, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/07/2026, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Joseph Boufadel** jboufadel@salvatoboufadel.com; Gsalvato@salvatoboufadel.com;
gsalvato@ecf.inforuptcy.com
- **Christopher Ghio** Christopher.Ghio@dinsmore.com; bonnie.connolly@dinsmore.com
- **Karen Hockstad** karen.hockstad@dinsmore.com; kim.beavin@dinsmore.com
- **Ira David Kharasch** ikharasch@pszjlaw.com
- **Yosina M Lissebeck** Yosina.Lissebeck@Dinsmore.com; caron.burke@dinsmore.com;
ayrton.celentino@dinsmore.com
- **Richard A Marshack (TR)** pkraus@marshackhays.com; ecf.alert+Marshack@titlexi.com
- **Victoria Newmark** vnewmark@pszjlaw.com; hdaniels@pszjlaw.com; bdassa@pszjlaw.com;
hwinograd@pszjlaw.com
- **Brian A Paino** bpaino@hinshawlaw.com; hmosothoane@hinshawlaw.com; crico@hinshawlaw.com
- **Matthew Sommer** matthew.sommer@dinsmore.com; carrie.davis@dinsmore.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 01/07/2026, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Hon. Scott C. Clarkson
U.S. Bankruptcy Court, Ronald Reagan Federal Building
411 W. Fourth St., Ste. 5130
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/07/2026

Date

Carolina Rico

Printed Name

/s/ Carolina Rico

Signature